

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KIMLING ATHERLEY,

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF
EDUCATION; COLIN CALDWELL,

Defendants.

24-CV-6021 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff brings this *pro se* employment discrimination action, under Title VII of the Civil Rights Act of 1964, against the New York City Department of Education (“DOE”) and Colin Caldwell. Plaintiff filed the action on August 2, 2024. According to the court’s records, Plaintiff previously brought a Title VII action against the DOE and Caldwell. That action is pending before the Honorable Jessica G. L. Clarke. *See Atherley v. New York City Dep’t of Ed.*, No. 23-CV-0383 (JGLC) (KHP) (“*Atherley I*”). In *Atherley I*, Judge Clarke ordered Plaintiff to file an amended complaint by August 2, 2024.

The Court concludes that Plaintiff intended to submit an amended complaint in *Atherley I* rather than initiate a new civil action. Accordingly, the Court directs the Clerk of Court to docket the complaint in this action (ECF 1), as the amended complaint in *Atherley I*, No. 23-CV-0383. The Court notes that Plaintiff indicated in his submission filed in this action an addendum was attached. The submission, however, does not include an attachment or a statement of facts. The Court advises Plaintiff that he should submit his statement of facts in *Atherley I*.

CONCLUSOIN

The Court directs the Clerk of Court to docket the complaint in this action (ECF 1), as the amended complaint in *Atherley v. New York City Dep’t of Ed.*, No. 23-CV-0383 (JGLC) (KHP).

The Court dismisses Plaintiff's complaint filed in this action without prejudice to the litigation of *Atherley*, No. 23-CV-0383.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to enter a civil judgment in this action.

SO ORDERED.

Dated: August 14, 2024
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge